GENERAL ALLEGATIONS

11. Defendant Frey, an inexperienced writer, initially engaged a literary agent to promote and sell the manuscript that was eventually published as *A Million Little Pieces* as a work of fiction.

12. When no publisher would accept the manuscript for publication as a work of fiction, Frey simply reclassified the work a "memoir" and repositioned the manuscript as a work of "nonfiction," specifically representing the writing as an autobiography that was based on true events.

13. On numerous occasions, between late 2002 and early 2006, both prior and subsequent to its publication, Frey stated that *A Million Little Pieces* was a true account of his life, and repeatedly represented and promoted the book as a work of nonfiction and autobiography to the public, including giving interviews to newspapers, magazines, television, and online, where he emphasized the work's truth, honesty, and fidelity to fact.

14. A Million Little Pieces was published in 2003 by defendants Doubleday, Random, and Vintage Anchor, labeled as a nonfiction book, and advertised and promoted as such, including describing the work as a memoir on the book's dust jacket, indicating to the book buying public that the author's account was truthful and correct, representations upon which consumers were intended to rely.

15. Various groups and publications, including *The New York Times*, publish weekly, and other, lists of book sales that divide the publishing market into fiction and nonfiction, and delineate for the public categories of works, to inform book buyers of the nature of a given work, so a consumer may make an informed choice with respect to the

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author's and publisher's product, and determine whether the work is based on truth or, instead, is purely a work of literary imagination.

16. Defendant Borders, a national bookseller, also represented that *A Million Little Pieces* was a work of nonfiction, a memoir based on the truth, and promoted the work as such by placing the book among its nonfiction titles, a classification upon which customers were intended to rely.

17. Defendant Frey's work *A Million Little Pieces*, it turned out, was neither an autobiographical work of nonfiction nor a memoir, but rather a long, sorry series of misrepresentations, a lurid tissue of lies and puffery, only incidentally based on true events, in which the author sought to deceive consumers about his life and experiences.

18. The publishers and sellers of Frey's invention had a duty to the public to verify the truth and accuracy of the author's account both before and after bringing the book to market and, correspondingly, a duty and obligation to insure that their advertising, promotion, and sale of the book was truthful. Defendants have breached these obligations and duties.

19. On or about October 15, 2005, in reliance upon defendants' representations that the work was a truthful account of Frey's life and experiences, plaintiff purchased *A Million Little Pieces* at a Borders store on Michigan Avenue, in Chicago, Illinois, and shortly thereafter read the book in its entirety.

CLASS ALLEGATIONS

20. This action is brought on behalf of a class. The class consists of all persons who purchased *A Million Little Pieces* on or before January 26, 2006, in whatever form, whether clothbound, paperback, audiocassette, CD, e-book, or in any

other form, abridged or unabridged. Excluded from the Class are defendants herein, members of the immediate family of each of the defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party, as well as any judicial officer to whom this case is assigned.

21. The class is so numerous that joinder of all members is impracticable.

22. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members, including whether the book was truthful and accurate, as well as whether the advertising, promotion, and sale of the work by defendants breached both statutory and common law duties to consumers. Because the damages suffered by each individual class member are relatively small, the burden and expense of individual prosecution of this litigation creates a disincentive to litigation and makes it cost-prohibitive for individual class members to seek redress for the wrongful conduct alleged herein. Absent class treatment, defendants would likely retain the benefits of its wrongdoing and continue to knowingly violate the law.

23. Plaintiff's claims are typical of the claims of the class members; all are based on the same legal and factual issues.

24. Plaintiff will fairly and accurately represent the members of the class, as she believes she has been defrauded by defendants' conduct.

25. Plaintiff has retained counsel experienced in the prosecution of similar actions.

26. A class action is superior for the fair and efficient prosecution of this claim, as it is economically irrational to prosecute individual claims, the class is easily definable, and a class action will allow for the orderly and expeditious handling of claims.

COUNT I
Consumer Fraud

27. Plaintiff realleges paragraphs 1 through 26 as if the same were fully set forth herein.

28. At all relevant times, there was in full force and effect in the State of Illinois a statute commonly known as the Consumer Fraud and Deceptive Business Practices Act, which provides in pertinent part as follows (815 ILCS 505/2):

> Unfair methods of competition and unfair and deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression or omission of any material fact with the intent that others rely upon the concealment, suppression or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduce of any trade or commerce are hereby declared unlawful where any person has in fact been mislead, deceived or damaged thereby.

29. The Consumer Fraud and Deceptive Business Practices Act further provides, at 815 ILCS 505/10(a), that:

> Any person who suffers actual damages as a result of a violation of this Act committed by any person may bring an action against such person. The court, in its discretion, may award actual economic damages or any other relief which the court deems proper.

30. Plaintiff and each member of the putative class are consumers within the meaning of the Consumer Fraud and Deceptive Business Practices Act 815 ILCS

505/1(e). Consumer Fraud Statutes are in effect in states where defendants do business that are similar to the ICFA.

31. The sale of books by defendants as alleged herein constitutes the sale of merchandise as defined by the Consumer Fraud and Deceptive Business Practices Act 815 ILCS 505/1(b).

32. The conduct of defendants as alleged in the general allegations, including its intentional breach of contract, and its knowing fraud, intended during the time defendants advertised, promoted, and sold *A Million Little Pieces* as a work of nonfiction, constitutes the use or employment of unfair practices, deception, fraud, false pretense, false promise, misrepresentation, and the concealment, suppression or omission of a material fact, with the intent that plaintiff and all other members of the class rely upon said concealment, suppression, and/or omission of such material fact, such as to constitute a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

33. At all relevant times, defendants concealed and omitted to disclose the true nature of the book and failed to disclose in their advertisements and promotions that the book was not a memoir and work of nonfiction, but, rather, was a purely a document of the author's fancy.

34. Plaintiff and each member of the putative class have suffered actual economic damages as a result of the aforesaid violations of the Consumer Fraud and Deceptive Business Practices Act by Defendant in that Plaintiff and the Class did not receive the benefit of their bargain when they purchased the work.

35. Defendants' conduct, as alleged herein, is willful and/or wanton in that, at all relevant times, it knew or should have known that *A Million Little Pieces* was a work of fiction, and that by intentionally mislabeling the book as a nonfiction memoir, it was able to sell books to consumers on a fraudulent basis. As such, the class is entitled to an award of punitive damages in an amount to be set by the Court.

WHEREFORE, plaintiff and the putative class pray for relief and judgment against the defendants, as follows:

A. For certification of a class of all persons who have suffered from the same consumer fraud violations as plaintiff;

B. For actual damages, pre-judgment interest, punitive damages, attorneys' fees, together with plaintiff's costs of suit;

C. For temporary, preliminary, and permanent injunctive relief ordering defendant to stop falsely advertising and promoting *A Million Little Pieces* as a nonfiction work, and to truthfully disclose that the book is fictional and, if anything, only incidentally based on true events; and

D. For such other and further relief as this Court may deem necessary and just.

COUNT II
Unjust Enrichment

36. Plaintiff realleges paragraphs 1 through 35 as if the same were fully set forth herein.

37. As a consequence of defendants' misrepresentations, wrongful acts, and omissions, defendants have been unjustly enriched at the expense of plaintiff and the

putative class, who, but for the aforesaid misrepresentations, acts, and omissions would not have purchased *A Million Little Pieces*.

38. Plaintiff and the putative class seek restitution from defendants, and seek an appropriate order requiring defendants to disgorge all profits, benefits, and other compensation earned by the sale of *A Million Little Pieces*, since it would be contrary to principles of equity and justice for these defendants to retain these monies and benefits as they were obtained through deceit and false pretenses.

WHEREFORE, plaintiff and the putative class pray for relief and judgment against the defendants, as follows:

A. For certification of a class of all persons who have suffered from the same consumer fraud violations as plaintiff;

B. For restitution, actual and punitive damages, pre-judgment interest, and attorneys' fees, together with plaintiff's costs of suit;

C. For temporary, preliminary, and permanent injunctive relief ordering defendant to stop falsely advertising and promoting *A Million Little Pieces* as a nonfiction work, and to truthfully disclose that the book is fictional and, if anything, only incidentally based on true events;

D. For an accounting of defendants' sales and profits from the book, as well as for the imposition of a constructive trust with respect to monies retained by defendants from both past and future sales of *A Million Little Pieces*.

E. For such other and further relief as this Court may deem necessary and just.

COUNT III
Breach of Implied Warranty

39. Plaintiff realleges paragraphs 1 through 38 as if the same were fully set forth herein.

40. Illinois, like all states and the District of Columbia, has adopted the Uniform Commercial Code ("UCC" or "Code"), including §2-314, which concerns the implied warranty of merchantability.

41. Defendants sold the book to plaintiff and the putative class, and said sales constitute transactions in goods under the UCC.

42. Defendants are merchants for purposes of the Code, as they regularly deal in goods of this kind and hold themselves out to the public as dealers in books and related goods such as the work complained of herein.

43. A warranty of merchantability was implied in the contract for sale of this work that plaintiff and the putative class purchased.

44. Defendants breached their implied warranty of merchantability, as the book was defective and not merchantable for its intended use.

WHEREFORE, plaintiff and the putative class pray for relief and judgment against the defendants, as follows:

A. For certification of a class of all persons who have suffered from the same consumer fraud violations and breach of warranty as plaintiff;

B. For a finding that defendants breached their implied warranty of merchantability to plaintiff and the putative class, as well as for a finding of actual damages, pre-judgment interest, punitive damages, attorneys' fees, together with plaintiff's costs of suit;

C. For temporary, preliminary, and permanent injunctive relief ordering defendant to stop falsely advertising and promoting *A Million Little Pieces* as a nonfiction work, and to truthfully disclose that the book is fictional and, if anything, only incidentally based on true events; and

D. For such other and further relief as this Court may deem necessary and just.

COUNT IV
Breach of Express Warranty

45. Plaintiff realleges paragraphs 1 through 44 as if the same were fully set forth herein.

46. Illinois, like all states and the District of Columbia, has adopted the UCC, including §2-313, which concerns express warranties.

47. Defendants sold the book to plaintiff and the putative class, and said sales constitute transactions in goods under the UCC.

48. Defendants are merchants for purposes of the Code, as they regularly deal in goods of this kind and hold themselves out to the public as dealers in books, such as the work complained of herein.

49. An express warranty in the contract for sale of this work was extended to plaintiff and the putative class, when they purchased the work, that the work was nonfiction, truthful and accurate, and not simply a product of the author's imagination.

50. Defendants have breached this express warranty, as the book – as defendants knew—was a work of fiction, untruthful in great part, and primarily a document of the author's fancy.

WHEREFORE, plaintiff and the putative class pray for relief and judgment against the defendants, as follows:

A. For certification of a class of all persons who have suffered from the same consumer fraud violations and breach of warranty as plaintiff;

B. For an order finding defendants in breach of their express warranty to plaintiff and the putative class, as well as for a finding of actual damages, pre-judgment interest, punitive damages, attorneys' fees, together with plaintiff's costs of suit;

C. For temporary, preliminary, and permanent injunctive relief ordering defendant to stop falsely advertising and promoting *A Million Little Pieces* as a nonfiction work, and to truthfully disclose that the book is fictional and, if anything, only incidentally based on true events; and

D. For such other and further relief as this Court may deem necessary and just.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial.

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